

Police Prosecutor Update

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Last year, the court of appeals addressed the issue of what effect, if any, a tongue stud in a person's mouth has on the admissibility of the result of a breath test of that person. The court reversed the defendant's conviction, holding that the Department of Toxicology regulation requires that a person to be tested must not have *had* any *foreign substance* in his or her mouth and that a tongue stud is a foreign substance. The Supreme Court reversed the court of appeals but not on the basis of whether or not a tongue stud is a "foreign substance."

The regulation in question specifies, "the person to be tested must have had nothing to eat or drink, must not have *put* any foreign substance in his or her mouth or respiratory tract, and must not smoke within twenty (20) minutes prior to the time the breath sample is taken." The concern over foreign substances in a person's mouth is the potential for the substances to absorb and retain alcohol. Studies have shown that a 15 to 25 minute waiting period during which nothing is placed in a person's mouth allows sufficient time for any mouth alcohol to dissipate. Therefore, the logical conclusion to draw from the regulation's use of the word "put" is that any foreign substance placed in a person's mouth more than 20 minutes prior to a breath test poses no problem for the reliability of the results.

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A recent case looked at the exigent circumstances exception to the search warrant requirement.

Police received an anonymous tip that someone at a particular residence had been shot. They first went to the location of the payphone that was used to call in the tip but no one was there. They then approached the residence, saw someone peek through a window blind, and heard that person yell "Police!" At that point, police heard a commotion inside as people began running throughout the house.

One of the officers ran toward the back of the house but stopped to look into a kitchen window. He saw two men crouched near a kitchen cabinet. The officer saw that one of the men had cash and a gun in his hands. The officer yelled at the man to drop the gun and ordered both men to lie on the floor. Instead, the men got up and tried to exit the house through the back door. When they were unable to open the door, they returned to the kitchen and complied with the officer's commands. The officer then yelled at the other officers to force their way into the house. After each occupant of the house was secured, police obtained a search warrant for the house. The defendant sought to suppress the evidence obtained after police forced their way into the house without a warrant.

A recognized exception to the search warrant requirement is when exigent circumstances exist. Under this exception, police may enter a residence if the situation suggests a reasonable belief that someone inside the residence is in need of aid. The evidence in this case showed that police were investigating whether someone inside the residence was in need of aid. One officer testified that when the police approached the residence, someone inside alerted the others to the police presence, and he heard people running toward the back of the house. He then followed a sidewalk that led to the back of the house to see if the occupants were exiting through the back door. The court noted that police coming on genuinely pressing or emergency matters could reasonably be expected to seek out residents through areas other than the front door. On his way to the back door of the house, the officer observed through a window a man holding a gun. The court stated that at that point, the officer's observations corroborated the tip that someone may have been shot and justified the warrantless entry on the basis of exigent circumstances.

Cases: *Guy v. State*, 823 N.E.2d 274 (Ind. 2005)

Collins v. State, 822 N.E.2d 214 (Ind. Ct. App. 2005)